Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-545

MILTON M. MOORE, JR., PETITIONER,

versus

THE SUPREME COURT OF SOUTH CAROLINA; CHIEF JUSTICE J. WOODROW LEWIS, ASSOCIATE JUSTICE C. BRUCE LITTLEJOHN, ASSOCIATE JUSTICE JULIUS B. NESS, ASSOCIATE JUSTICE WILLIAM L. RHODES, JR., AND ASSOCIATE JUSTICE GEORGE T. GREGORY, JR., AS JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA, AND FRANCES H. SMITH, AS CLERK OF THE SUPREME COURT OF SOUTH CAROLINA AND IN HER OFFICIAL CAPACITY AS SECRETARY TO THE STATE BOARD OF LAW EXAMINERS, RESPONDENTS.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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INDEX

PAGE

Opinions Below 1

Jurisdiction 2

Question Presented 1

Statement of the Case 2

Statement of the Facts 3

Argument:

I. The requirement that applicants to the South Carolina Bar have successfully completed a course a study at an approved law school creates no irrebuttable presumptions but is a substantive standard to require that members of the bar have received the training in their profession which is given in reputable law schools 4

II. The requirement that persons seeking admission to the South Carolina Bar have graduated from an approved law school is a valid exercise of the State's power to regulate the legal profession and does not deprive the Petitioner the equal protection of the law 7

III. The rule of the South Carolina Supreme Court requiring graduation from an approved law school as a prerequisite to sitting for the Bar Examination does not infringe on the right of interstate travel 9

Conclusion 11

TABLE OF CITATIONS

Cases	Page
Doe v. Pringle, 550 F. 2d 596 (10th Cir. 1976), cert. denied, 431 U. S. 916	2
Donnelly v. Boston College, 558 F. 2d 634 (2nd Cir. 1977), cert. denied, 434 U. S. 987	8
Graves v. Minnesota, 272 U. S. 425 (1926)	8
Hackin v. Lockwood, 361 F. 2d 499 (9th Cir. 1966), cert. denied, 385 U. S. 960	9
Hawkins v. Moss, 503 F. 2d 1171 (4th Cir. 1974)	10
Huffman v. Montana Supreme Court, 372 F. Supp. 1175 (D. Mont. 1974)	10
In Re Lockwood, 154 U. S. 116 (1894)	8
Massachusetts Board of Retirement v. Murgia, 427 U. S. 307 (1975)	8
Mourning v. Family Publications Service, Inc., 411 U. S. 356 (1973)	6
Murphy v. State Board of Law Examiners for the Commonwealth of Pennsylvania, 429 F. Supp. 16 (D. C. Pa. 1977)	9
Ostroff v. New Jersey Supreme Court, 415 F. Supp. 326 (D. N. J. 1976)	9
Potter v. New Jersey Supreme Court, 403 F. Supp. 1036 (D. N. J. 1975), affirmed, 546 F. 2d 418 (3rd Cir. 1976)	9
Rooker v. Fidelity Trust Co., 263 U. S. 413 (1923)	2

TABLE OF CITATIONS—Continued

Cases PAGE

Selling v. Radford, 243 U. S. 46 (1916) 7

Shapiro v. Thompson, 394 U. S. 618 (1969) 9

Shenfield v. Prather, 387 F. Supp. 676 (N. D. Miss. 1974) 10

Theard v. United States, 354 U. S. 278 (1956) 7

Washington v. Davis, 426 U. S. 229 (1976) 8

Statutes:

United States Code

Title 28, Section 1331 3

Rules of Court:

Rules for the Examination and Admission of Persons to Practice Law in South Carolina, Rule 5(4) 2, 4, 5, 9

Other Authorities:

Note, The Irrebuttable Presumption Doctrine in the Supreme Court, 87 Harv. L. Rev. 1534 (1974) 6

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the District of South Carolina are set out in the Appendix to the Petition for Writ of Certiorari.

JURISDICTION

Respondents do not question the Court's jurisdiction to issue a Writ of Certiorari to the Fourth Circuit Court of Appeals in this proceeding; Respondents do contest the jurisdiction of the lower federal courts to order the South Carolina Supreme Court to permit Petitioner to sit for the Bar Examination in that the appropriate means of challenging the decision of the South Carolina Supreme Court in his case was by appeal to this court and not by suit in the lower federal courts. *Rooker v. Fidelity Trust Co.*, 263 U. S. 413 (1923); *Doe v. Pringle*, 550 F. 2d 596 (10th Cir., 1976) cert. denied, 431 U. S. 916 (1976).

QUESTION PRESENTED

I

Whether the requirement of the South Carolina Supreme Court that those seeking admission to her bar have graduated from an approved law school is constitutionally prohibited?

STATEMENT OF THE CASE

This action was brought by Milton M. Moore in the United States District Court for the District of South Carolina seeking that the Court declare Rule 5(4) of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina enacted by the South Carolina Supreme Court unconstitutional and order that the South Carolina Supreme Court permit him to sit for the Bar Examination. The District Court granted the defendants' motion for summary judgment and the Court of Appeals affirmed the District Court's opinion.

STATEMENT OF THE FACTS

The Petitioner, Milton M. Moore, filed a Complaint against the Justices of the South Carolina Supreme Court and the Clerk of the Supreme Court asking that a decision of that court be reviewed and enjoined by the United States District Court of South Carolina. The action was brought in the form of a declaratory judgment asking for injunctive relief with jurisdiction allegedly based on 28 U. S. C. § 1131.

The Petitioner is a licensed Georgia attorney at law who has been engaged in the general practice of law in the State of Georgia for nine years. He first entered the University of South Carolina Law School. He left after his first year. He graduated from John Marshall Law School in Atlanta, Georgia, an institution which has not been approved by the Council of Legal Education of the American Bar Association or by the South Carolina Supreme Court.

The Petitioner sought permission from the South Carolina Supreme Court to take the South Carolina Bar Examination. By letter of May 15, 1975, the Court denied his petition. Prior to the decision of the Court, the Petitioner wrote the Court on April 7, 1975, requesting that the Court reconsider its position on admission to the South Carolina Bar under the Reciprocity Rule. This request was denied on April 16, 1975. On or about April 24, 1975, the Petitioner petitioned the Court to certify that he had satisfactorily met the educational requirements and legal education necessary for examination and admission to practice law in the State of South Carolina. This petition was denied on May 14, 1975. Again on November 20, 1975, the Petitioner petitioned the Court to allow him to take the Bar Examination and on December 4, 1975, this petition was

denied. On none of these occasions did Petitioner appeal to this Court.

The Petitioner then filed suit in federal court asking that it review the decisions of the South Carolina Supreme Court and that it find Rule 5(4) of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina (hereinafter Rule 5(4)) unconstitutional.

ARGUMENT

I

The requirement that applicants to the South Carolina Bar have successfully completed a course a study at an approved law school creates no irrebuttable presumptions but is a substantive standard to require that members of the bar have received the training in their profession which is given in reputable law schools.

The Respondents do not understand the Petitioner to argue that the South Carolina Supreme Court may not impose prerequisites to the practice of law in South Carolina in addition to the passing of the South Carolina Bar Examination. There appears to be no dispute that an examination, without more, may be insufficient to test the skills of one attempting to enter a profession. Neither party disputes the fact that such skills must, in some fashion, be determined. The Supreme Court of South Carolina has determined that such skills may reasonably be assured by graduation from a law school possessing certain requisites. These requisites are determined to be met by the University of South Carolina Law School and by law schools accredited by the American Bar Association. In addition, such requisites may be established to the satisfaction of the South

Carolina Supreme Court. Rule 5(4).[1] The requirement that an applicant for admission to the Bar of South Carolina graduate from a law school which meets certain criteria is apparently challenged by the Petitioner as unconstitutional.

The purpose for the requirement of graduation from a law school meeting certain requirements is obvious. The Courts of the various states and the federal courts have experienced difficulties in controlling the qualifications of counsel appearing before them. Clearly, examination without more is insufficient to better assure the competence and skills of counsel. Seeking to improve the standards of the practicing bar, the South Carolina Supreme Court abolished diploma privilege, the practice of reading law and eliminated the practice of admission by motion of attorneys from other jurisdictions. These steps effectively increased the control of the South Carolina Supreme Court over the qualifications of those permitted to hold themselves out to the citizens and courts of the state as competent attorneys. The Court has limited the privilege to those who successfully complete a course of study at an approved law school and who successfully pass the South Carolina Bar Examination.

The Petitioner dóes not appear to contest the requirement that an applicant in some way prove his qualifications to the satisfaction of the South Carolina Supreme Court. However, the Petitioner ignores the fact that the requirement of attendance at a law school is not a means

[1] The Courts below erroneously assumed that graduation from an ABA approved law school was the sole means of qualifying for the South Carolina Bar. Rule 5(4) specifically states that graduation from a law school approved by the South Carolina Supreme Court will also qualify an applicant to take the Bar Examination. Petitioner neither alleged nor attempted to prove that the South Carolina Supreme Court would not approve another law school. No evidence was ever introduced that any law school has ever sought approval by the South Carolina Supreme Court.

of classifying persons but is in itself a substantive requirement, as is the bar examination. In effect, successful completion of a course of study at an approved law school is in itself a test of the Applicant's skills.

> No consideration is more critical in evaluating the qualifications of an applicant for admission to the bar than the quality and calibre of his legal education. A good lawyer must possess a complete and workable legal education; developed through exposure to many branches of law, contacts and communication with competent and professional instructors, experience in legal research and writing, interaction with other students, and access to current and complete research materials.

Rossiter v. The Law Committee of the State Board of Law Examiners, et al., Civil Action No. C-4767 (D. Colo., August 26, 1975) (three-judge court) appeal dismissed (D. Colo., January 20, 1977) (three-judge court), Slip op. at 12. The *Rossiter* court found that the requirement of graduation from, in that case, an ABA approved law school was a valid, substantive standard set by the Colorado Supreme Court[2] and that the logical implication of adoption of the "irrebuttable presumption" analysis in this situation would have the effect of undermining all substantive requirements.

Petitioner's argument goes too far. To apply such analysis and accept his argument, the requirement of any legal training whatsoever would entirely disappear since if the assumptions on which the rule is based could not be indulged in, the Court could have no basis for distinguishing between persons who attended law school at all and those who did not. Nor could it deny the opportunity to

[2] See *Mourning v. Family Publications Service, Inc.*, 411 U. S. 356, 377 (1973) in which this Court rejected irrebuttable presumption analysis where the substantive purpose of the statutory requirement went beyond establishment of the "presumed fact" as does the substantive purpose here. Note, The Irrebuttable Presumption Doctrine in the Supreme Court, 87 Harv. L. Rev. 1534 (1974).

prove fitness to high-school dropouts, since the same analysis would apply. A state could not require graduation from medical school for those who seek to become doctors. The Constitution does not require that the state extend such privileges.

The requirement of graduation from an approved law school is a substantive standard imposed by the South Carolina Supreme Court to require that attorneys who practice at its bar have received training of a certain type and met the rigorous requirements imposed by a law school of sufficiently high calibre. As such, the requirement makes no irrebuttable presumptions.

II

The requirement that persons seeking admission to the South Carolina Bar have graduated from an approved law school is a valid exercise of the State's power to regulate the legal profession and does not deprive the Petitioner the equal protection of the law.

The proposition that the right to regulate the membership in the bars of the states is the exclusive right of the states themselves has been repeatedly recognized by this Court.

> The two judicial systems of courts, the state judicature and the federal judiciary, have autonomous control over the conduct of their officers among whom, in the present context, lawyers are included.

Theard v. United States, 354 U. S. 278 (1956); *Selling v. Radford*, 243 U. S. 46 (1916). The state courts have the right and the obligation to require that those who offer their services to the public of the state and who practice before them be persons of high moral character and legal

ability. The state courts alone have the right to make the decision regarding who may practice before them.

> . . . [T]he right to control and regulate the granting of a license to practice law in the courts of a state is one of those powers not transferred for its protection to the federal government.

In re Lockwood, 154 U. S. 116 (1894).

In a field regulable by the state, the appropriate test for prerequisites is whether such requirements have a rational basis, absent some showing of invidious purposeful attempts to discriminate against a protected class. E. g. *Massachusetts Board of Retirement v. Murgia,* 427 U. S. 307 (1976); *Washington v. Davis,* 426 U. S. 229, 246 (1976). It cannot seriously be contended that a rule requiring that one seeking to practice law must receive training at an approved law school is irrational.

> As this Court stated in a similar case:
>
> Clearly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry. We cannot say the state is acting arbitrarily or unreasonably when, in the exercise of its judgment, it determines that the holding of such a diploma is a necessary qualification for the practice of dentistry; or that the distinction made in the granting of licenses between applicants who hold such diplomas and those who do not, is a classification which has no real or substantial basis. And the constitutionality of the statute must be sustained.

Graves v. Minnesota, 272 U. S. 425, 428-429 (1926); *Donnelly v. Boston College,* 558 F. 2d 634 (2nd Cir. 1977) cert. denied, 434 U. S. 987; *Lombardi v. Tauro,* 470 F. 2d 798 (1st Cir. 1972) cert. denied, 41 U. S. 919; *Rossiter, supra.*;

Hackin v. Lockwood, 361 F. 2d 499 (9th Cir. 1966) cert. denied, 385 U. S. 960; *Murphy v. State Board of Law Examiners for the Commonwealth of Pennsylvania,* 429 F. Supp. 16 (D. C. Pa. 1977); *Ostroff v. New Jersey Supreme Court,* 415 F. Supp. 326 (D. N. J. 1976); *Potter v. New Jersey Supreme Court,* 403 F. Supp. 1036 (D. N. J. 1975) affirmed, 546 F. 2d 418 (3rd Cir. 1976).

III

The rule of the South Carolina Supreme Court requiring graduation from an approved law school as a prerequisite to sitting for the Bar Examination does not infringe on the right of interstate travel.

The District Court and the Fourth Circuit Court of Appeals carefully analyzed and rejected the Petitioner's contention that the right to travel interstate is violated by the rules setting the requirements for becoming a member of the South Carolina Bar. As the Court noted, distinguishing the cases dealing with durational residency requirements cited by the Petitioner:

> A durational residency requirement on its face creates a classification between long term residents and recent migrants. Accordingly, such a classification directly involves the right to travel. The ABA law school requirement (sic), on the other hand, does not draw a distinction between residents and nonresidents or between long term residents and recent migrants. Rule 5(4) applies to residents and nonresidents alike. The classification distinguishes only between those who have graduated from ABA approved law schools (sic) and those who have not. In light of this distinction, the *Shapiro*[3] test, which appears to require little

[3] *Shapiro v. Thompson,* 394 U. S. 618 (1969).

> more than a chilling effect on the right to travel, is inapplicable.

Pet. at 7(a). The District Court correctly noted that the rule challenged by the Petition addresses no distinct class of persons who travel interstate nor imposes any greater burdens upon such a group than on residents.

As the Court noted in *Huffman v. Montana Supreme Court,* 372 F. Supp. 1175, 1182 (D. Mont. 1974) (three-judge court)

> [c]ertainly there exist numerous statutes in our several states which may affect citizens in their decisions of whether to travel to or reside in those states. For example, a state may impose a sales tax upon specified commodities in trade. A state may also impose speed limits upon drivers of motor vehicles upon that state's public highways. While a sales tax or a speed limit may influence some citizens in their decisions of whether to travel or reside in our states, those statutes do not constitute a direct impingement upon the fundamental personal right of interstate travel.

It has been held that the rules of state courts restricting the "diploma privilege" to graduates of their state university law schools do not violate the right to interstate travel. *Shenfield v. Prather,* 387 F. Supp. 676 (N. D. Miss. 1974) (three-judge court); *Huffman v. Montana Supreme Court, supra.* Nor is reciprocity among the bars of the various states constitutionally required. *Hawkins v. Moss,* 503 F. 2d 1171 (4th Cir. 1974). Since it lies in the power of the courts of the states to regulate the practice of law within their borders the fact that such requirements differ from state to state gives rise to no constitutional violation.[4]

CONCLUSION

For all of the foregoing reasons, Respondents respectfully submit that the Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit should be denied.

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[4] Petitioner contends that the restriction of membership in the bar of South Carolina to graduates of approved law schools operates as a permanent exclusion of him from practicing law in the state. This is, of course, untrue. He may fulfill the requirements at any time he choses. He stands in no different position than any person who has not yet met the prerequisites for the practice of a profession. A businessman who decides that he wishes to practice medicine cannot assert a right to do so on the grounds that the requirement that he attend medical school operates as a "permanent exclusion."